

Circuit Court for Montgomery County
Case No.: 376736V

UNREPORTED
IN THE COURT OF SPECIAL APPEALS
OF MARYLAND

Nos. 747 and 1446

September Term, 2019

ESTHER L. BAGLEY

v.

LAURA H.G. O’SULLIVAN, et al.

Beachley,
Gould,
Moylan, Charles E., Jr.
(Senior Judge, Specially Assigned),

JJ.

PER CURIAM

Filed: December 22, 2020

*This is an unreported opinion, and it may not be cited in any paper, brief, motion, or other document filed in this Court or any other Maryland Court as either precedent within the rule of stare decisis or as persuasive authority. Md. Rule 1-104.

In April of 2013, an Order to Docket was filed in the Circuit Court for Montgomery County initiating foreclosure proceedings on a residential property owned by Esther L. Bagley, appellant. The property was, thereafter, sold at a foreclosure sale to the Federal National Mortgage Association (“Fannie Mae”), appellee,¹ and the circuit court entered an order ratifying the sale on April 12, 2018 (“Ratification Order”). Ms. Bagley noted a timely appeal from the Ratification Order. Ms. Bagley’s appeal, however, was dismissed by this Court on March 12, 2019, and her subsequent petition for certiorari was denied by the Court of Appeals on September 5, 2019.

After the entry of the Ratification Order, and before the dismissal of Ms. Bagley’s appeal, Fannie Mae filed two motions seeking possession of the property. Fannie Mae’s first request for possession ultimately failed. Fannie Mae’s second motion for possession, however, was heard before the circuit court and granted on June 6, 2019. Ms. Bagley noted a timely appeal from the order granting possession to Fannie Mae (“Possession Order”).

On June 10, 2019, Fannie Mae filed a request for writ possession, seeking to evict Ms. Bagley from the property. On June 24, 2019, Ms. Bagley filed an emergency motion to stay the eviction proceedings, contending that the appeals of the Ratification Order and the Possession Order were pending and necessitated a stay of the circuit court proceedings. On July 1, 2019, the circuit court granted Ms. Bagley’s emergency motion to stay (“Stay Order”), provided that she post a supersedeas bond in the amount of \$74,300.00 with the

¹ Substitute trustees Laura H.G. O’Sullivan, Rachel Kiefer, and Michael Cantrell are also appellees. The substitute trustees have not filed a brief for the Court’s consideration of this appeal.

clerk of the court or deposit that amount into the circuit court registry. The Stay Order further provided that should Ms. Bagley fail to post the supersedeas bond, Fannie Mae was entitled to enforce the Possession Order “including without limitation, by causing the Sheriff to execute the writ of possession issued June 20, 2019.” Rather than posting the bond, Ms. Bagley filed a motion for reconsideration and two emergency requests for a hearing on the motion for reconsideration, asking the court to reduce the bond amount. The motion for reconsideration was ultimately denied by the court on August 15, 2019 (“Reconsideration Order”).

Because no supersedeas bond was posted, Fannie Mae caused the sheriff to execute the writ of possession and Ms. Bagley was evicted from the property on August 20, 2019. Ms. Bagley, thereafter, filed an emergency motion for injunction asking that the court enjoin Fannie Mae “from continuing to remove and destroy [her] personal property” at the property, allow Ms. Bagley to retrieve her possessions from the property, and “vacate the eviction due to improper service.” Following a hearing, Ms. Bagley’s motion for injunction was denied (“Injunction Order”). In September of 2019, Ms. Bagley noted a timely appeal from the Stay Order, the Reconsideration Order, and the Injunction Order. Her appeal was consolidated by this Court with her prior appeal of the Possession Order. On appeal, Ms. Bagley raises the following questions for our review:

1. Did the trial court err when it granted possession to [Fannie Mae]?
2. Did the trial court err when it failed to reduce the amount of the surety where [the appellant] demonstrated that the amount of the bond was based upon an erroneous fair market value of the property?

3. Did the trial court err when it refused to stay the eviction and grant injunctive relief and when it permitted [Fannie Mae] to evict [the appellant] on an invalid writ of possession?

For the following reasons, we shall affirm the judgments of the circuit court.

DISCUSSION

POSSESSION ORDER

Ms. Bagley first contends on appeal that the circuit court erred in granting Fannie Mae’s motion for possession of the property. In support, she argues that the Possession Order was entered “prematurely” as this Court had not yet decided her appeal of the Ratification Order. We review a circuit court’s order granting or denying a motion for judgment of possession applying an abuse of discretion standard. *G.E. Capital Mortg. Servs., Inc. v. Edwards*, 144 Md. App. 449, 456 (2002). Upon review of the record, we find no abuse in the court’s discretion in entering the Possession Order.

Indeed, the Ratification Order entered by the court in April of 2018 was a final judgment from which Ms. Bagley was entitled to note an appeal. *See Hughes v. Beltway Homes, Inc.*, 276 Md. 382, 384 (1975) (“[a]n order ratifying a sale is a judgment . . . final in its nature.”). The court’s entry of the Ratification Order served two important functions: 1) it allowed “title of the property to pass to the purchaser” and 2) it “cut off the mortgagor’s right of redemption—the right to repay the mortgage debt—and terminate[d] the mortgagor’s interest in the property.” *Laney v. State*, 379 Md. 522, 538-42 (2004). Accordingly, “after ratification of the sale, the right of possession to the foreclosed property [resided] solely with [Fannie Mae],” divesting Ms. Bagley of any right to possession of the property. *Id.* Further, pursuant to Maryland Rule 14-102(a), Fannie Mae, as the party

entitled to possession of the property, was permitted “to file a motion for judgment awarding possession of the property” where Ms. Bagley remained on the property following the ratification order.

Contrary to Ms. Bagley’s assertions, the effect of the Ratification Order was not stayed merely by the filing of her appeal of the Ratification Order. Pursuant to Maryland Rule 8-422, Ms. Bagley was permitted to stay enforcement of the Ratification Order “by filing with the clerk of the lower court a supersedeas bond under Rule 8-423 [or] alternative security as prescribed by Rule 1-402(e)” which could be “filed at any time before satisfaction of the judgment.” Had such a bond or security been filed, enforcement of the Ratification Order would have been stayed “from the time the security [was] filed.” Md. Rule 8-422. Because no such bond or security was filed by Ms. Bagley during the pendency of her appeal, the circuit court was permitted to enforce the Ratification Order, even as her appeal was pending in this Court. *See Jones v. Rosenberg*, 178 Md. App. 54, 71 (2008) (“In a foreclosure action, a supersedeas bond must be filed” to stay enforcement of a judgment.). Accordingly, the circuit court did not abuse its discretion in proceeding to consider Fannie Mae’s motion for possession despite the pending appeal.

AMOUNT OF SUPERSEDEAS BOND TO STAY POSSESSION ORDER

Ms. Bagley’s second contention on appeal is that the amount of the supersedeas bond, which she sought to stay the enforcement of the Possession Order, was “too high.” Pursuant to Maryland Rule 8-423(b)(2), the court was required to set the amount of the supersedeas bond at an amount that included the cost of “the use and detention of the property, interest costs, and damages for delay.” The record reveals that prior to the grant

of the Possession Order, Ms. Bagley did not assert any argument as to the proper bond amount. Instead, Ms. Bagley first argued that the bond amount was excessive in her motion for reconsideration of the Possession Order and in her subsequent requests for a hearing on the motion for reconsideration. Therefore, with regard to this issue, we shall review the court’s denial of Ms. Bagley’s motion for reconsideration for an abuse of discretion. *See Wilson-X v. Dep’t of Human Res.*, 403 Md. 667, 675 (2008).

We do not discern that the court abused its discretion in denying Ms. Bagley’s motion for reconsideration. The record shows that in response to Ms. Bagley’s motion for stay, Fannie Mae explicitly argued that the amount of the supersedeas bond should be \$450,000. Fannie Mae arrived at this value considering the following values: 1) that the “rental rate” of the property was \$3,600 to \$4,500 per month, 2) that the real estate taxes would be in excess of \$4,500, and 3) that Fannie Mae would incur appellate legal expenses in the amount of \$15,000. As Ms. Bagley did not contest the values asserted by Fannie Mae prior to the entry of the Stay Order, the court was only equipped with these figures in assessing the bond amount. In setting the supersedeas bond amount, therefore, it was reasonable for the court to rely solely on these figures. Moreover, there is no indication that the court considered values it was not permitted to consider in setting the bond amount under Maryland Rule 8-423(b)(2). The court appropriately considered a rental value of \$3,600 per month for 18 months, hazard insurance at \$4,500 per month and \$5,000 per month for appellate costs exclusive of attorney’s fees. As a result, the court arrived at a \$74,300.00 bond, a number far lower than the \$450,000.00 requested by Fannie Mae.

In her motion for reconsideration, Ms. Bagley asserted that the \$450,000 amount requested by Fannie Mae was too high as it did not accurately reflect the property value of the home. However, the property value of the home was not a value that the court considered when setting the bond amount, nor was the court required to consider the home value pursuant to Maryland Rule 8-423(b)(2). It was reasonable, therefore, for the circuit court to deny reconsideration on these grounds. In Ms. Bagley’s subsequent request for an emergency hearing on the motion for reconsideration, Ms. Bagley asserted that the rental value of the property was actually \$1,800. However, she did not support her claim as to the rental value with any documentation. Under the circumstances, and deferring to the discretion of the court, it was reasonable for the court to deny reconsideration in the face of an unsupported assertion alone.

INJUNCTION ORDER

Ms. Bagley’s third contention on appeal is that the court erred in denying her request for an injunction which sought to enjoin Fannie Mae “from continuing to remove and destroy [her] personal property” at the property so that Ms. Bagley could retrieve her possessions from the property. Additionally, her motion sought to “vacate the eviction due to improper service.” Ms. Bagley’s petition sought relief pursuant to Maryland Rule 15-504 which provides:

A temporary restraining order may be granted only if it clearly appears from specific facts shown by affidavit or other statement under oath that immediate, substantial, and irreparable harm will result to the person seeking the order before a full adversary hearing can be held on the propriety of a preliminary or final injunction.

While Ms. Bagley’s request for an injunction did assert that she would suffer “irreparable harm” as a result of being “stripped of her possessions,” she did not specify the type or the value of her possessions which remained at the property. As a result, she failed to argue how substantial the harm would be if an injunction were not instituted. Moreover, she failed to specify the immediacy of the harm should the injunction not be granted. Her motion in itself, therefore, failed to allege facts sufficient to satisfy Maryland Rule 15-504. The record reveals that there was a hearing on Ms. Bagley’s request for an injunction where such additional argument may have been presented to the court. However, Ms. Bagley has failed to provide the transcript of hearing for our consideration as required by Maryland Rule 8-411. Without access to the full record, we are unable to review whether the court committed error as alleged by Ms. Bagley. *See Kovacs v. Kovacs*, 98 Md. App. 289, 303 (1993) (“The failure to provide the court with a transcript warrants summary rejection of the claim of error.”).

To the extent that Ms. Bagley’s motion sought to vacate the eviction, Ms. Bagley did not have standing to challenge her eviction given the ratification order had already divested her of any right to possession of the property.

**JUDGMENT OF THE CIRCUIT
COURT FOR MONTGOMERY
COUNTY AFFIRMED. COSTS TO
BE PAID BY APPELLANT.**